

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #10	CCRB Case #: 201804391	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/02/2018 11:58 PM	Location of Incident: § 87(2)(b)	Precinct: 120	18 Mo. SOL 12/2/2019	EO SOL 12/2/2019	
Date/Time CV Reported Sun, 06/03/2018 9:20 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Sun, 06/03/2018 9:20 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			120 PCT
2. POM Michael Fasano	00410	963510	120 PCT
3. POM Sean Pallone	13921	952086	120 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Alexander Bustamante	03890	950133	120 PCT
2. POM John Tepedino	20966	963298	120 PCT
3. POM Andrew Tagliaferro	22386	962827	120 PCT
4. POM Ryan Harkins	10194	961805	120 PCT
5. POM Fadi Tawil	20917	939558	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Fasano	Force: Police Officer Michael Fasano used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Sean Pallone	Force: Police Officer Sean Pallone used physical force against § 87(2)(b)	§ 87(2)(b)
C. An officer	Force: An officer used a chokehold against § 87(2)(b)	§ 87(2)(b)
D. An officer	Force: An officer restricted § 87(2)(b)'s breathing	§ 87(2)(b)

Case Summary

On June 3, 2018, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System on behalf of her son, § 87(2)(b). On June 4, 2018, § 87(2)(b) filed a duplicate complaint with the CCRB via telephone.

At approximately 11:58 p.m. on June 2, 2018, § 87(2)(b) got into a dispute with her son, § 87(2)(b) at their home at § 87(2)(b), on Staten Island. § 87(2)(b) is autistic and mostly non-verbal. During the dispute, § 87(2)(b) attempted to leave the apartment. § 87(2)(b) and her neighbor, § 87(2)(b) physically restrained § 87(2)(b) to prevent him from leaving. § 87(2)(b) called 911 to obtain help in dealing with § 87(2)(b).

PO Michael Fasano, PO Sean Pallone, PO John Tepedino, PO Andrew Tagliaferro, PO Ryan Harkins and PO Fadi Tawil of the 120th Precinct responded to the apartment. PO Fasano and PO Pallone grabbed § 87(2)(b) by his arms. They then allegedly forced him to the ground (**Allegations A and B – Force: Physical force, § 87(2)(g)**). One of these two officers allegedly choked § 87(2)(b) by placing an arm around his neck (**Allegation C – Force: Chokehold, § 87(2)(g)**; **Allegation D – Force: Restricted breathing, § 87(2)(g)**). The officers handcuffed § 87(2)(b) and lifted him to his feet. § 87(2)(b) was taken out of the apartment and transported by ambulance to § 87(2)(b). § 87(2)(b) was given a psychiatric examination. § 87(2)(b) was released into § 87(2)(b)'s custody later that morning.

Video footage from the incident was recovered from the six officers' body-worn cameras, attached in IAs #58-63 (See Board Review #01-06: Video Footage). A summary of the videos has been attached in IA #64 (See Board Review #07: Video Summary). Relevant portions of the videos have been included below (See Board Review #08-10: SnagIt Captures). No other video was found from this incident.

Findings and Recommendations

Allegation (A) Force: Police Officer Michael Fasano used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Sean Pallone used physical force against § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on June 8, 2018 (See Board Review #11: § 87(2)(b)'s Statement). She stated that her § 87(2)(b)-old son, § 87(2)(b) is autistic. § 87(2)(b) often goes through long spells where he becomes uncommunicative and refuses to speak. During the evening on June 2, 2018, § 87(2)(b) and § 87(2)(b) got into an argument over the settings on the thermostat at their home at § 87(2)(b). § 87(2)(b) attempted to leave the apartment, forcing § 87(2)(b) to physically block him from leaving. § 87(2)(b) called her neighbor, § 87(2)(b) to help her restrain § 87(2)(b). When § 87(2)(b) continued to try to leave, § 87(2)(b) called 911 and told the operator that her § 87(2)(b)-old son was having a “behavioral outburst” and was throwing things. At approximately 12:30 a.m. on June 3, 2018, several officers, including PO Fasano and PO Pallone, arrived at the apartment. When they came to the front door, § 87(2)(b) asked them, “You’ve come to shoot me?” § 87(2)(b) then ran out of the front door. Moments later, PO Fasano and PO Pallone walked § 87(2)(b) back into the apartment. The officers were holding him by his arms. The two officers then “forced” § 87(2)(b) to the ground, face-down. § 87(2)(b) was unable to describe the manner in which the officers forced § 87(2)(b) down, but she denied that they pushed him down. One of the two officers then placed his knee on the middle of § 87(2)(b)'s

back to hold him down. § 87(2)(b) was not moving or offering physical resistance at that time. After several minutes, the officers placed § 87(2)(b) in handcuffs and removed him from the apartment. They then removed § 87(2)(b) from the apartment and escorted him out of the building to an ambulance. § 87(2)(b) was taken to § 87(2)(b) and given a psychiatric evaluation. He was released later that day.

§ 87(2)(b) provided a telephone statement on July 9, 2018 (See Board Review #12: § 87(2)(b)'s Statement). She stated that § 87(2)(b) called her for assistance in dealing with § 87(2)(b) when he became upset and started throwing things. When § 87(2)(b) arrived at § 87(2)(b)'s and § 87(2)(b)'s apartment, she assisted § 87(2)(b) in holding the apartment's front door closed. When the officers arrived, § 87(2)(b) attempted to run out of the front door. One of the officers blocked his path, preventing him from leaving. This officer then pushed § 87(2)(b) to the ground. § 87(2)(b) did not recall where this officer made contact with on § 87(2)(b)'s body, but believed that it was his arms or his torso. § 87(2)(b) landed face-down on the ground. Another officer leaned down and placed § 87(2)(b) in handcuffs. The officers then lifted § 87(2)(b) to his feet. § 87(2)(b) did not recall how long § 87(2)(b) was on the ground for, but she felt that it was a brief period of time. She did not feel that the officers used excessive force against § 87(2)(b). She stated that the officers used an appropriate amount of force in order to restrain § 87(2)(b) and prevent him from fleeing.

Since this incident, § 87(2)(b) has refused to speak. As such, he did not provide a statement. § 87(2)(b) was treated at § 87(2)(b) (See Board Review #13: Medical Records). They confirmed that § 87(2)(b) is autistic and uncommunicative during his psychiatric examination. No mention is made of any physical struggle between § 87(2)(b) and the police. No physical injuries were noted.

PO Fasano was interviewed at the CCRB on July 18, 2018 (See Board Review #14: PO Fasano's Statement). He stated he received a report of an emotionally disturbed person (EDP) at § 87(2)(b). He did not recall if any additional information was provided. He and his partner, PO Pallone, met up with several other officers outside of the apartment. When they knocked on the door, § 87(2)(b) opened it. She was standing by the door with § 87(2)(b). § 87(2)(b) grabbed § 87(2)(b)'s arm and stated, "I'm going to shoot her." One of § 87(2)(b)'s arms was behind his back. PO Fasano and PO Pallone stepped into the apartment and grabbed § 87(2)(b)'s hands. They did so in order to restrain § 87(2)(b) and determine if he was holding a firearm behind his back. The officers pulled § 87(2)(b) away from § 87(2)(b) breaking his grip. § 87(2)(b) responded by holding both of his arms against his chest and balling his fists. The officers tried to pry his arms loose. They told § 87(2)(b) that he was not in trouble. § 87(2)(b) did not say anything in response. Because § 87(2)(b) refused to give up control of his arms, the two officers brought him to the ground. PO Fasano explained that they gradually lowered § 87(2)(b)'s arms towards the ground in order to bring him down in a controlled fashion. He denied that they pushed or threw § 87(2)(b). § 87(2)(b) came down on his front. § 87(2)(b) wriggled his torso while he was on the ground. He did not make any further movements. PO Fasano and PO Pallone pulled § 87(2)(b)'s arms behind his back and placed him in handcuffs. They then lifted him back to his feet. PO Fasano denied that any other force was used against § 87(2)(b). He denied that he or any other officer placed a knee on § 87(2)(b)'s back.

Sgt. Bustamante was interviewed at the CCRB on August 8, 2018 (See Board Review #15: Sgt. Bustamante's Statement). He stated that he received a report over the radio of an EDP at § 87(2)(b). Since he was assigned as the patrol supervisor at the time, he responded to

this report. He arrived at the location after § 87(2)(b) had already been handcuffed and lifted off of the ground. He did not observe any officers use any force against § 87(2)(b) after he arrived. He was not aware of officers having used force against § 87(2)(b) prior to his arrival, including forcing § 87(2)(b) to the ground or placing a knee on his back.

ICAD event #§ 87(2)(b) documents § 87(2)(b)'s call to 911 (See Board Review #16: ICAD Event). § 87(2)(b) told the 911 operator that a § 87(2)(b)-old male was trying to leave her apartment. He had become violent and was “trying to get physical.” Yelling was heard in the background of the call. One male was subsequently transported to § 87(2)(b) in regard to this call.

This incident was recorded on body-worn cameras by PO Fasano, PO Pallone, PO Tepedino, PO Tagliaferro, PO Harkins and PO Tawil (See Board Review #01-06: Video Footage). The struggle with § 87(2)(b) was best visible on PO Fasano's, PO Pallone's and PO Tepedino's cameras. SnagIt captures from their videos have been attached below (See Board Review #08-10: SnagIt Captures).



201804391 - SnagIt - PO Pallone.mp4



201804391 - SnagIt - PO Fasano.mp4



201804391 - SnagIt - PO Tepedino.mp4

The videos show the officers approaching § 87(2)(b) and § 87(2)(b) at the front door. At 0:00 on each recording, PO Pallone asks § 87(2)(b) what is going on. § 87(2)(b) is holding § 87(2)(b) by the shoulders. He states, “Come here to shoot me.” At 0:04, the officers enter the apartment. PO Pallone and PO Fasano grab § 87(2)(b)'s arms and attempt to pull them back. They tell him, “Relax,” and, “Don't fight.” At 0:15, the officers push § 87(2)(b) down and hold him on the ground by his arms and legs for approximately thirty seconds. § 87(2)(b) does not move while on the ground. The officers pull § 87(2)(b)'s hands behind his back and place him in handcuffs. At 0:45, they lift him back up to his feet. At no point while § 87(2)(b) is on the ground are any officers seen placing a knee on § 87(2)(b)'s back.

NYPD Patrol Guide procedure 221-01 states that officers may use limited physical force when it is reasonable in order to place a person in custody. Officers may only use the reasonable amount of force necessary to gain control of an individual (See Board Review #17: Legal Reference).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)

Allegation (C) Force: An officer used a chokehold against § 87(2)(b)

Allegation (D) Force: An officer restricted § 87(2)(b)'s breathing.

§ 87(2)(b) stated that after PO Fasano and PO Pallone forced § 87(2)(b) to the floor, one of them placed his right arm across § 87(2)(b)'s neck and then pressed down on the back of § 87(2)(b)'s head using his left hand. § 87(2)(b) began gasping for breath. § 87(2)(b) did not recall how long the officer held § 87(2)(b) in this position, but she estimated that it was for several minutes. The officer then released § 87(2)(b) and applied his handcuffs.

§ 87(2)(b) denied that any of the officers made contact with § 87(2)(b)'s neck or took any actions to restrict his breathing while he was on the floor. § 87(2)(b) did not appear to have any difficulty breathing while on the floor. § 87(2)(b) did not recall how long § 87(2)(b) was on the ground for, but she felt that it was a brief period of time.

PO Fasano denied that he or any other officer placed an arm around § 87(2)(b)'s neck or otherwise made contact with § 87(2)(b)'s neck. He denied that he or any other officer choked § 87(2)(b) or took any actions to deliberately restrict § 87(2)(b)'s breathing. PO Fasano denied that § 87(2)(b) complained of or appeared to have any difficulty breathing during the incident.

Sgt. Bustamante denied that he was present at the time of this allegation. He stated that he arrived after § 87(2)(b) was placed in handcuffs and lifted from the ground. He did not see any officers choke § 87(2)(b) restrict § 87(2)(b)'s breathing, or make contact with § 87(2)(b)'s neck. He did not hear § 87(2)(b) complain about having difficulty breathing.



201804391 - SnagIt - PO Pallone.mp4



201804391 - SnagIt - PO Fasano.mp4



201804391 - SnagIt - PO Tepedino.mp4

Body-worn camera footage from PO Pallone, PO Fasano and PO Tepedino recorded the officers' interactions with § 87(2)(b). The videos show that § 87(2)(b) was on the floor for approximately thirty seconds, between 0:15 and 0:45 on each recording. During that period, no officers are seen placing § 87(2)(b) in a chokehold, making contact with § 87(2)(b)'s neck, or taking any actions to restrict § 87(2)(b)'s breathing. § 87(2)(b) does not complain about having any difficulty breathing.

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) has been a party (See Board Review #18: Civilian CCRB Histories).
- PO Fasano has been a member of the service for one year and has been a subject in one previous CCRB complaint with one allegation, which is still under investigation. § 87(2)(g)
- PO Pallone has been a member of the service for six years and has been a subject in four previous CCRB complaints and six allegations, of which one was substantiated:
 - 201503947 involved a substantiated allegation of discourtesy (word) against PO Pallone. The Board recommended that he receive training and the NYPD issued him instructions.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- A Notice of Claim request was submitted to the NYC Office of the Comptroller on August 27, 2018. It will be included in the case file upon receipt.
- According to the Office of Court Administration, neither § 87(2)(b) nor § 87(2)(b) have a history of convictions in New York City (See Board Review #19: Civilian Conviction Histories).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date